the Unionists made proper use of their tenure of office, or taken warning by the reverse of 1906, and have not, by their tactics, forced the moderate Liberals into an alliance with the extremists. The future is to Mr. Holland not free from constitutional dangers:—"the constitution is now at the disposal of a vast and mobile electorate, to whom tradition and history mean very little. To this electorate, as to all the successive depositories of power, the flatteries of ambitious men are addressed. A modern theory, resting on no historic basis, seeks to show that the main function of the House of Lords has always been to give effect to the permanent and considered will of the people, whereas in fact it is as a check to democracy that a second chamber is really useful, and was always justified as such in former times not only by Tories but by Whigs."

The International Law and Custom of Ancient Greece and Rome. By COLEMAN PHILLIPSON, M. A., LL. D. (New York: Macmillan & Co., 1911. Vol. I, pp. xxii, 419. Vol. II, pp. xvi, 421.)

No more striking illustration of the fact that the present generation is rewriting the history of the past, especially of the remote past, could be found than in this latest contribution to the history of international law. When Kent, in his Commentary on International Law, states that even the most civilized states among the ancients seem to have had had no conception of the moral obligations of humanity and justice between nations, and when Wheaton, in his History of the Law of Nations, published in 1845, tells us that the Greeks considered they had no obligations towards other states apart from those regulated by an express compact, and that states not parties to the compact were in the position of outlaws,—we can only conclude that the vast array of facts presented by Mr. Phillipson were entirely unknown to them.

The distinctive feature of international law among the Greeks is that it was based upon the peculiar city-state system of the Hellenic world. The city-state was an organized community, dwelling usually within a walled town, and enjoying independence and autonomy. The citizen of these city-states owed a double allegiance, an allegiance first to his city, and then to the wider Hellenic circle. The latter allegiance, which was founded upon a common race and a common religion, undoubtedly tended to promote friendly relations between the various cities, but as these cities constituted independent states possessing

actual autonomy, the fact that the law regulating their mutual relationship might be called *intermunicipal* does not prevent if from being truly *international* in character.

The Greek conception of law was based upon religion; the ancient sanction of positive law was rather its divine origin than the acceptance of it by the people; but it is of no consequence where the sanction lies, provided it be an effective one, and duties assume a juridical character as soon as the obligations correlative to them are acknowledged. It is true that a large part of what the author claims to be international law had its basis in those general conceptions of law, which were variously termed the universal law, the law of nature, the moral law as opposed to the positive law, natural justice as opposed to conventional, etc. But so long as the rules derived from the Greek conception of law were regularly insisted upon and applied between independent and sovereign nations, they assume the character of law, notwithstanding the fact that the principles of juridical equality and reciprocity of nations were not as definitely recognized then as now.

In Rome, as in Greece, religion formed the basis of law, notably during the first half of her history. The *good faith* of which Rome was so proud was closely allied to religion, piety, respect for the gods. But the juristic genius of Rome soon led her into wider fields of law than were known to the city-state system of the Greeks. The *ius gentium*, "originally an intertribal law of limited application," gradually expanded through the growth of dealings with other nations than those of Italy, and later became a public and private international law controlling the then known world. It supplemented the civil law of Rome, and though its character of private international law was more emphasized in the beginning, it later became the *ius belli et pacis* and regulated the relations of Rome with other states. It is true that in the second period of Rome's history, when she had become mistress of the surrounding nation, the principles of reciprocity and juridical equality were less recognized than formerly, and international law as such declined; but if we turn to the history of our own times we must recognize that although in theory the states of the civilized world are legally equal, in actual fact they are far from being so, and instances of strong powers playing the part of international bullies are but too frequent. If in theory Rome claimed supremacy, in practice she acknowledged obligations which show her acceptance of a higher law than that of policy.

Perhaps the most instructive chapters of Mr. Phillipson's volumes

are those dealing with the rights and duties of domiciled aliens. The change in the position of metoecs, and the gradual increase of privileges accorded to them, mark the slow breaking down of the spirit of exclusiveness which controlled the policy of the cities of Greece during the early and classical periods. Commerce was then, as in more modern times, the opening wedge, and civic pride gave way before it, when once the city's needs had outgrown the resources of the surrounding territory subject to it. In Rome, on the other hand, the desire for supreme dominion and the spirit of world sovereignty did what commerce had done for the Greeks, only did it more completely and effectively, and brought about the amalgamation first of the various tribes of Italy into a single Roman state, then of the distant colonies andconquered nations into the unity of the Roman empire. The increasing facility with which naturalization was granted marked, in Greece,the gradual loss of state personality among the independent cities, and in Rome the gradual growth of the policy of imperial expansion.

The chapters on international arbitration in Greece and Rome are especially valuable for the many examples of arbitral awards cited by the author. Instances of arbitration in Greece are to be found even in the traditions of the heroic age, and by the time of the classical period the conception of arbitration was clearly developed, and arbitral procedure was a recognized method for the peaceful settlement of international and intermunicipal disputes. In Rome, on the contrary, in the earlier period of her history, the desire of supremacy made the acceptance of arbitration impossible; and later on, when her domination was assured, it was rather the quarrels of subject peoples that were submitted to her tribunals, than her own disputes with independent nations. There could be no real arbitration where states were forced to submit to a tribunal not of their own choosing.

In treating of the law of war Mr. Phillipson does not attempt to cover over the injustice which often accompanied a declaration of war, and the horrors attending actual combat. If the college of fetials went through the formalities of petition for redress of grievances, of solemn threat, and ceremonious declaration of war, it did not always follow that the cause was a just one even in the eyes of Rome, but granting that there was occasional hypocrisy, it is at the same time unquestionable that the *ius fetiale* exercised great influence in reducing the excesses of warfare and the recklessness and unscrupulousness with which the nations of antiquity went to war.

It is difficult not to continue comment upon the various subjects so lucidly and convincingly treated. There are further chapters of dealings with the consular system, the right of asylum, extradition, negotiation and treaties, confederations and alliances, and the balance of power.

It is seldom that a work exhibiting so much scholarship, so much painstaking investigation, thoughtful comment, and careful reasoning, is offered to the literary world. The author has had recourse to Greek and Roman sources which have remained hitherto untouched as regards their present application, so that his work is at the same time the most authoritative treatise upon the subject, and the first comprehensive and systematic presentation of the matter which has yet appeared. Perhaps the author might have economized space by omitting certain citations from French and German writers, where an almost literal translation of the passages immediately precedes. Citations from ancient writers whose works are accessible to all may also seem out of place, except for the service they render in emphasizing the text and in facilitating a comparison of the modern with the ancient technical terms.

But these are minor points, and they in no way detract from the praise which the author deserves for the difficult task he has brought to so happy a completion. The introductory note by Sir John Macdonell points out the greater interest which the work will have because of the fact that the international law of the ancient world is in some respects "much more akin to that of today" than is the law described by Grotius in the De Jure Belli et Pacis.

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A General Survey of Events, Sources, Persons, and Movements in Continental Legal History. By various authors. *Volume I of the Continental Legal History Series.* Published under the auspices of the Association of American Law Schools. (Boston: Little, Brown & Co., 1912. Pp. 754.)

The undertaking which this volume introduces constitutes an epoch-making event in our legal literature. The book under review is the first of a series of eleven volumes translated from the best continental legal literature, whose purpose is to present to the American and English lawyer and historian the history of European law. This volume deals with the external history of continental law—that